



# CONSTITUENT ASSEMBLY OF PAKISTAN DEBATES

Tuesday, the 20th October, 1953

## OFFICIAL REPORT

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## CONSTITUENT ASSEMBLY OF PAKISTAN

*Tuesday, the 20th October, 1953*

The Constituent Assembly of Pakistan met in the Assembly Chamber, Karachi, at eleven of the Clock, Mr. President (The Honourable Mr. Tamizuddin Khan) in the Chair.

### REPORT OF THE BASIC PRINCIPLES COMMITTEE—*contd.*

**Mr. President:** Further consideration of the following motion moved by the Honourable Mr. Mohammed Ali on the 7th October, 1953 :

“That the Report of the Basic Principles Committee be taken into consideration.”

**Moulavi Ibrahim Khan (East Bengal : Muslim) :** Sir, I would now turn to Clause 49, wherein it has been provided that Ministers, Deputy Ministers, Parliamentary Secretaries, etc., will be exempted from the disqualification connected with absence from constituency. Why not the same exemption be extended to the Parliamentarians? They too in future are likely to remain away from their constituencies for over six months in the course of discharging their duties connected with the Legislatures?

Sir, I would next invite your attention to sub-clauses 2 and 2(d) of Clause 2, Chapter II. It has been said that in these clauses that steps should be taken by the State to enable the Muslims to order their lives in accordance with the Holy Quran and the Sunnah—and for the promotion and maintenance of Islamic moral standards among them. A noble resolve, nobly provided for. But, Sir, in addition to our taking suitable steps for converting others into good Mussalmans, can we not include ourselves and those over whom we have effective control, among those to be reclaimed? For the latter, I am thinking of the Government officers. They are recruited from among the best of our youths. They practically run the administration: their education, their ability, their position—all combine to enable them to give a practical lead to the millions and millions among whom they live and work. Now, Sir, it is well-known that one living demonstration of correct life in a man moving among us is worth more than tons of books on morals. Thus if our Government officers offer themselves as ideals before the public, they will be rendering priceless service to the State by uplifting its moral level.

May I, therefore, suggest that in our constitution a clause like the following should be provided suitably somewhere :

“That in the matter of appointments generally and in the matter of promotions specially, in cases of Muslims, a reasonable approach to the standard of life and conduct recommended by Islam, will be one of the factors for consideration, along with other usual conditions as at present are insisted upon.”

Sir, some friends in East Bengal—most well-meaning and honest lovers of the people, I have no doubt—yes, they have regretted, as I find in Press reports, that the population superiority of East Bengal has been sacrificed to parity. This sacrifice is a fact and I appreciate their sense of the loss. But let us tell them: ‘Friends, if the eastern wing of Pakistan has sustained some loss by the sacrifice, entire Pakistan has immensely gained by it. And what is a gain to Pakistan as a whole is equally a gain to its units as well. East Bengal need not regret. She

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may, on the contrary, rejoice that it was given to her to effectively co-operate in resolving the deadlock that was threatening the disruption of the very State itself !'

Hats off to those negotiating members whose courage, faith and devotion enabled the successful crossing over of this apparently insurmountable hurdle.

Sir, I shall now try to answer a few of the observations made on this occasion by some of my friends in opposition : I deliberately say "a few observations", because so many missiles have been hurled by them that it may take well over a week to return them all. Happily, however, many of them being wide of the mark have flown away without leaving any scar on their target.

Let me make a few confessions at the outset, namely—that I entertain a sincere respect for the members of the opposition for the commendable industry with which they try to study and grasp the problems that are presented before this House for discussion and for taking decisions upon ; that the minority problem has from the earliest ages of history, been a problem of considerable difficulty ; that difficulty has no doubt got to be boldly faced and tackled to the utmost by such sympathy, circumspection and sagacity as may have been vouchsafed to man by Providence, but honest differences of opinion may still persist to linger ; that I share the anxiety that our minority friends are naturally feeling over the various phases of the recommendations specifically connected with their future ; that I congratulate them on the energy and persistence with which they have tried to focus the attention of the House on certain weighty considerations, many of which, let me assure them, are agitating the mind of some members of this side as well ; that the observations which I propose to make have originated solely from an honest desire for removing at least a part of the clouds that appear to have been hovering above in the mind of the honourable members concerned and casting a deceptive shadow over their judgement.

Sir, I shall not disturb those honourable members who are so assiduously engaged in competing with one another for inventing more and more astounding epithets for the B. P. C. Report. The inspired Mr. Dhiren Dutt has characterised the Report as a 'fraud on the nation', the soldierly Mr. Shaukat Hyat has beaten rice-eater Dutt by dubbing the Report as a 'fraud on entire Islam' and the shrewd Mr. Chakraverty has come last and carried away the crown by declaring the Report as a 'fraud on the whole world'.....

**Prof. Raj Kumar Chakraverty (East Bengal : General) :** I never said "fraud on the whole world". You are wrong.

**Moulavi Ebrahim Khan :** I stand subject to correction, but that is what I remember at this moment.

**Prof. Raj Kumar Chakraverty :** I never used the word "fraud" in the course of my speech.

**Moulavi Ebrahim Khan :** The record will have to be ransacked to see whether you are correct or not.

**Shri Sris Chandra Chattopadhyaya (East Bengal : General) :** But you have got copies of all the speeches delivered by us.

**Moulavi Ebrahim Khan :** This is not the time to make corrections ; there will be ample time for that later on.

I do hope other Honourable Members of the House will agree with me that these good friends should be left alone for their conducting further research in this invaluable nation-building department.

Let me make it absolutely clear that in agreeing to support the motion for the consideration of the B.P.C. Report we have never thought, as the framers of the recommendations themselves have never thought, that at last a perfect set of recommendations for an eternally perfect constitution have been placed before us. I would have mourned the fate of mankind in a drigue of immeasurable pathos, if that evil hour had really arrived. For, I would then have been forced to conclude that as the current of the evolution has come to an end, the end of creation itself is not far to come. Thank God, we have escaped that catastrophe. We ourselves have our protest to enter, our criticisms to make, and our suggestions to offer regarding certain recommendations of the Report. But we do feel convinced that a commendable, honest and earnest effort has been made by the members of the Committee and that a valuable document has been prepared and presented which may be profitably reviewed in all its perspective and accepted with necessary changes. And as soon as this is done, the caravan may be ordered to speed up and proceed onward along the way of progress. If in the course of its journey, clouds gather on the horizon and thunders start rumbling in the offing, the caravan may well halt at a wayside tavern, adapt itself to the changed circumstances and re-start on its march towards the ultimate goal.

Sir, the main objection taken against the B.P.C. Report by my Honourable friends, Prof. Chakraverty and Mr. B. K. Dutta, has appeared to me to centre round the attempt at giving an Islamic complexion to certain provisions of the proposed Constitution.

They say it is not necessary to bring religion into politics. I may observe that an attempt has been made to bring Islam and not religion into politics. There is a basic distinction between Islam and religion as commonly understood by non-Muslims. So far as my limited knowledge goes, all known religions other than Islam have given a definite and preponderating emphasis on the life to come, leaving life on this side of the grave in comparative neglect. Islam on the other hand seeks to bring life on both sides of the grave into a harmonious union, laying definitely greater emphasis on this life than on the next. To enjoy the amenities of life and the bounties of Nature is not only not discouraged in Islam, but is on the contrary, within bounds of moderation, a positive act of piety. Islam is thus inextricably connected with life and for the matter of that, with all the agencies like State, society and culture that are meant for serving life.

On the advantage of associating religion with life in all its aspects, says Dr. Iqbal\* :

"Humanity needs three things today—a spiritual interpretation of the universe, spiritual emancipation of the individual and basic principles of a universal import directing the evolution of human society on a spiritual basis. Modern Europe built idealistic systems on these lines, but experience shows that truth revealed through pure reason is incapable of bringing that fire of living conviction which personal revelation alone can bring. This is the reason why pure thought has so little influenced men while religion has always elevated individuals and transformed societies."

I would beg the indulgence of the honourable members through you, Sir, for their bearing with me for my inflicting on them another quotation for the purpose of dispelling fear that Islam may arrest the march of the progress of science in Pakistan.

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\*Page 179, Reconstruction of Religious Thought in Islam.

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Says Briffault in his 'Making of Humanity' † :

"Science is the most momentous contribution of the Arab civilisation to the modern world... Although there is not a single aspect of European growth in which the decisive influence of Islamic culture is not traceable, nowhere is it so clear and momentous as in the genesis of that power which constitutes the distinctive permanent force of the modern world and the supreme source of its victory—natural science and the scientific spirit."

Sir, while going through the illuminating speech of my friend Mr. B. K. Dutta, I stumbled upon a bewildering discovery, I found that while the Honourable Member is vehemently vociferous against the association of Islam with politics, he quietly congratulates the United States of Indonesia on its retention of *Garuda* as the State Emblem. *Garuda* is a Hindu god. So my generous friend warms up in enthusiasm when he sees a Hindu god usurp the exalted position of the national emblem in a Muslim State, but he girds up his loin when he sees Islam advance towards politics in what is avowedly a Muslim State. Alas !

Their next contention is that Islam is incompatible with the democratic form of Government. Says Mr. B. K. Dutta :

"The Islamic State idea is incapable of being grafted on the Parliamentary system of Government based on the sovereignty of the people."

and he has sought to fortify his position by quotations from Ibn-Abi R'-'Rabi, Farabi, Mawardi, Nizamul Mulk and Ghazali—all scholars from the 9th to the 11th century. He has complacently relied upon these old authorities, though he himself is mightily angry with the past and vehemently cries :—

"I beseech you to show some wisdom by letting the dead past bury its dead." and Prof. Chakraverty gravely warns :

"You cannot fit in the laws of the 7th century with those of the 20th century. !"

Sir, through you, I propose to place before them quotations from some modern writers, as my friends claim to be staunch sponsors of modernism : Says Dr. Iqbal ‡ :

"The Republican form of Government is not only thoroughly consistent with the spirit of Islam, but has also become a necessity in view of the new forces that are set free in the world of Islam."

Says Dr. Horten, a living professor of Semitic Philology at the University of Bonn :

"The spirit of Islam is so broad that it is practically boundless. With the exception of atheistic ideas alone, it has assimilated all the attainable ideas of surrounding peoples and given them its own peculiar direction of development."

I may refer my Honourable friends to some old writers as well. Says Saifuddin Muhammad-Bin-Thaba, of the 14th Century A. D. :

"The duty of the subject is obedience ; but no subject is bound to obey a tyrant."

And the great Ibn Rushd§ supplements him by adding :

"The tyrant is he who governs for himself and not for his people."

But the opinions of the savants quoted above regarding the compatibility of Islam and democracy are not their mere deductions drawn

†Page 130, Reconstruction of Religious Thought in Islam.

‡Page 157, Reconstruction of Religious Thought in Islam.

§Page 289, Spirit of Islam—Ameer Ali.

by far-fetched arguments. Here are some short passages from the Holy Quran that not only permits but clearly recommends Government by mutual consultation—

*Wa amrohum shoora bainahum.*

“And those who conduct (their affairs or their Government) by mutual consultation”. (*Shura: verse 38*).

Again—

*Wa shawirhum fil amr-e fa iza azamt-a fa-twakkal alal Lah.*

(O Muhammad) Consult them (the companions) in the affairs. Then when thou has taken a decision, put thy trust in Allah”. (*Al-Imran V, verse 159*.)

It is well-known how on the eve of the battle of Ohad, the Prophet is said to have had his misgiving regarding the wisdom of going out of the city of Medina to give battle to the invaders, but he accepted the verdict of the majority of his companions and left the city for Ohad.

Mr. Dutta will thus see that the representative of God on earth will have to consult chosen men, be they members of the advisory council, or of Cabinet, or of the Parliament or even of the electorate. My friend, therefore, need not worry over the problem of finding out a virtuous giant able to shoulder alone the burden of the State.

Sir, exception has been taken to clause 4 of the Objectives Resolution. It has been said, why should there be that qualifying phrase “as enunciated by Islam” after the words “the principles of democracy, freedom, equality, tolerance and social justice?”

Sir, it is a clear verdict of history and it has been witnessed even in our own days that nations with inspiring traditions of fight for freedom, with the motto of equality, fraternity and liberty writ large on their flags, have perpetrated and are still perpetrating unspeakable atrocities on defenceless people simply because their victims happen to belong to the coloured race. Among these nations, equality, liberty and social justice are apparently meant for the men of their own race. Not so is the equality ‘as enunciated by Islam’. The principle of *Tauhid* has invested Muslim mind with a conception of equality that transcends the bounds of colour and creed, race and region. How powerfully Muslim mind is dominated by this catholic spirit was demonstrated but recently in the Legislatures of un-divided Bengal. Three Bills were presented before the House: Free Primary Education Bill; Bengal Tenancy Amendment Bill and Money Lenders’ Bill. All these Bills were specially meant for relieving, irrespective of caste and creed, the sunken masses of the burden under which they had long been groaning. The passage of every one of these Bills was relentlessly resisted by the overwhelming majority, in same cases, if I remember aright, by all of the non-Muslim members of the House.

**Shri Dharendra Nath Datta** (East Bengal: General): No!

**Moulavi Ebrahim Khan**: I speak subject to correction. An overwhelming majority resisted!

**Shri Dharendra Nath Datta**: No!

**Moulavi Ebrahim Khan**: I am informed that there was one solitary member from that side who was in favour of the Primary Education Bill.

Men like Dr. Syama Prosad Mukherjee, whose family had devoted a great part of their lives to the cause, were opposed to it.

**Khwaja Nazimuddin**: He was not a member.

**Moulavi Ebrahim Khan**: Sir, those non-Muslim members who so stoutly opposed the Bills, had among them stalwarts of unimpeachable

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character, leaders with long records of public service and well-known fighters against British bondage. My own explanation of this riddle of their unexpected behaviour on these occasions is this that the tradition and environment of these good gentlemen nurtured in them a conception of equality and social justice that materially differed from the conception engendered and nourished by Islam in the mind of its votaries.

Mr. Datta has quoted a beautiful passage from Blackstone's "*Commentaries*" in support of his contention that a real parliament is absolutely all powerful. I would only remind him that the advent of the United Nations' Organisation has largely modified this theory of absolutism of Parliament or of sovereignty. Subject to this modification, the Parliament envisaged by Blackstone and the Parliament envisaged by the Basic Principles Committee Report are practically the same. Here too the Parliament that can accept Islam as a factor to count, may quite as well decide otherwise. Whether the Pakistan Parliament will so decide or not, that is a separate question, but the inherent power of the Parliament is indisputably there.

On our part, we expect our State will immensely gain by its association with Islam; if the fear of Mr. Datta still persists, my only answer is, my friend, wait in hope for—

"If hopes be dupes,  
Fears may be liars."

But, Sir, the gate of my friend's mind has been thrown so wide open without a guard on duty that other fears march in unchallenged. Mr. Datta says, apparently in great consternation, that if it is declared in the constitution that the Head of the State should be a Muslim, then this very declaration will encourage an outlook among the Muslim citizens that will imperil the very existence of the non-Muslims in Pakistan. In other words, according to Mr. Datta the touch of Islam is so magical that the harmless Muslims of today will begin to turn into minority-killing marauders of tomorrow. I do not give here any verdict on the merit or demerit of the recommendation that the Head of the State should be a Muslim, but I find it impossible to congratulate my friend at the dark picture painted regarding the consequences that according to him will flow therefrom. I have no doubt Mr. Datta has made this atrocious statement in a moment of oblivious anger; otherwise how can I venture to insult his scholarship by assuming that he has so completely neglected the history of his motherland that it has got to be told to him at this age of his that while in the England of Mary and Elizabeth and in the Spain of Phillip thousands of men were being burnt alive in the name of religion, the non-Muslims of India even under the autocratic rule of the powerful Muslim sovereigns were enjoying the widest possible freedom? Does he not agree with me that if the preaching of one solitary priest was enough for spelling the doom of Buddhism in this country, would not a continuous succession of Muslim rulers, if they had been endowed with the high intolerance of Mr. Datta's imagination—yes, would not they in their seven hundred years' frantic efforts—succeed in even reducing the non-Muslims into a minority, not to speak of making their existence impossible? Consistent with his generous theory of Muslim intolerance, how does he account for the preponderating Hindu population from days of Muslim rule right up to the day of the division in almost all the seats of Muslim sovereignty and administration like Delhi and Agra? Will he please recall what Sir Walter Scott says through the mouth of Rebecca when the unhappy girl bids farewell to Rowena? Rebecca says that her entire family is migrating to Muslim Spain because in all Europe that is the only country where the 'despised' Jews find a friendly atmosphere



to live in. My esteemed friend, may safely lay aside his anxiety and live in peace; for the incontrovertible facts of history tell a tale that entirely justifies his libellous apprehensions.

Sir, after enumerating and dilating upon all the evils that Islam is potentially capable of engendering for infecting the body politic, without citing a single instance where Islam even by mistake, has been of some use or may be of some use to any state, Mr. Datta is generous enough to observe. 'I have deep respect for Islam, as for other religions.' Prof. Raj Kumar Chakraverty said, if I remember aright, exactly the same thing the other day in this House. I admire the universal sweep of the sympathy of their noble minds. Their impartial, international outlook compels them to clearly state in unequivocal terms that they have deep respect for Islam, no doubt, but it is in no way deeper than the deep respect which they have for all other religions. This precaution is good; for otherwise bad men might suspect their partiality for the religion of those who for generations, nay for centuries, have lived with them in good neighbourly relations; have suffered with them in common bondage and have fought with them arm in arm against the enemies of the land. But the inexorable spirit of neutral catholicity demands that all these weaknesses must be wiped out from memory. What if Islam gave a new art to India in music, in painting and in architecture? What if Islam made priceless contribution to the growth of the Bengali literature? What if Islam made it possible for the rise of Raja Ram Mohan Roy, the accredited maker of modern India? All these must be forgotten and after weighing in a just balance, only that measure of respect can be conceded to Islam as may be given to the religions of the man-eaters and head-hunters of jungles of Central Africa or to the unknown inhabitants of Honolulu, Timbuctoo and Antananariva.

Sir, 'a deep respect for Islam' professed by my friends remind me of an incident of the life of the Late Maulana Mohammad Ali. In the beginning of the first Great War, he had written in his *Comrade* an article—'The Choice of the Turks' by name, in which he fiercely attacked British policy against the Muslim States. Government started a case against the Paper: Maulana Mohammad Ali addressed the trying magistrate inviting his attention to the last sentence of the article, as a proof of his loyalty. The last sentence read: 'But our anchor holds.' The magistrate smiled and said: 'My good friend, after so many things have been said, the anchor does not hold.'

But, Sir, I am tiring out my honourable colleagues and I must hasten to the end after touching some points raised by my esteemed friend Prof. Chakraverty in his speech. Mr. Chakraverty is deeply worried over the horrid picture of the atrocities that will, according to him naturally occur if Islam be associated with the State. For, according to him innumerable men will be found with only one hand, the other having been chopped off for theft, ghastly scenes of men stoned to death for adultery, idol worship stopped and venerable men including M. C. A's flogged publicly for hearing music. Sir, Islam was undoubtedly the State religion of the Moghal and Pathan Empires. These were days of much less enlightenment. The rulers were thorough-bred autocrats. Yet even in those ages, how many of the horrid pictures of Prof. Chakraverty's imagination have been referred to by any of the foreign travellers of the time? Prof. Chakraverty is a reputed scholar of wide study. So is Mr. B. K. Datta. Both of them seem to have read extensively—apparently to the exclusion of the literatures touched by their next door neighbours. The treaties on One World Government by Maulana Mohammad Ali of Lahore might have opened up before their mind new vistas regarding the possibilities of Islam in that field. Prof. Chakraverty could have avoided his

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grievous blunders on music and Islam had he cared to have a peep into Maulana Akram Khan Sahib's *Samasya-o sadhan* and Mirza Yusuf Ali's Bengali version of Imam Ghazali's *Keemia-e-Saadat*. Ameer Ali and Iqbal would have been illuminating in multifarious ways. But some how or other, these books seem to elude the grasp of my friends. Justly did the Bengali bard sing—

*Ghar Karinoo Bahir*

*Bahir Karinoo Ghar*

*Par Karinoo Apan*

*Apan Karinoo Par.*

My home I have turned into wilderness,  
And the wilderness I have turned into my home ;  
I have made aliens sit in my brothers' mess,  
I have, alas ! made my brothers aliens, unknown.

Sir, I know there is a tremendous volume of opinion in the West against Islam and most naturally, for they have seldom looked towards Islam except through the jaundiced spectacles of ecclesiastical fanatics or paid propagandists. The backward condition of the Muslim States has provided them with an additional plank to stand upon as a spring board to pounce upon Islam therefrom. Even some among us have got a subtle doubt lurking in their bosom ; Messrs. Chakravertys and Duttas are there of course.

But there is another side of the shield. I have had occasion to meet representative men of Arabia, Syria, Iraq, Iran and Egypt. All these countries are looking upto Pakistan for her carving a way out consistent with the tradition and spirit of their faith and culture. Many a thinkers in the West have gloomily predicted that their own civilization is on the brink of failure. They are wistfully looking forward for a new force to come in and save the world.

The challenge has come to us to prove that Islam is progress and not stagnation ; that it can save the world once again as it did at one time. We are going to take up the gauntlet not with an air of pride and arrogance, but in a spirit of devout humility. Let us, therefore, march forward with the ideal in our bosom, God overhead, and our good right hand below. *Amin.*

**Malik Shaukat Ali** (Punjab : Muslim) : Sir, being a member of the Basic Principles Committee, it is rather unusual that I should indulge in any adverse criticism of any provisions of the Report in the absence of any note of dissent by me. I am fully conscious of the fact that any such criticism on my part would constitute a violation of the principles of parliamentary practices and conventions, and, therefore, Sir, it is in the fitness of things that before I proceed to criticise the Report and some of the provisions of the Report, I should make my position clear. I was co-opted a member of the Basic Principles Committee only a few months before 22nd December, 1952, the date on which the Report of the Basic Principles Committee was presented to this august House. During this period, there was only two sittings of the Basic Principles Committee, one of which I unfortunately could not attend owing to my indisposition. The one that I had attended lasted only for about a week with the result that I had practically no opportunity of expressing my views on some of the most important matters which even up to this date are the subject-matter of bitter controversy in the country. I would also like to mention here that I duly informed the Honourable Chairman that

since I could not participate in the deliberations of the Basic Principles Committee owing to reasons which I have already stated, I may not be precluded from criticising the Report when the same comes up for discussion. The Honourable Chairman held out an assurance that under the circumstances, he would permit me. I thought it was necessary to say there few words by way of explanation because I am going to criticise some of the provisions of the Basic Principles Committee Report.

Now, Sir, before I proceed to make my observations, I would like to say a few words about what has been described by certain Members from the opposition as a farce and a fraud. A reference to this has already been made by certain Members sitting on this side, and I would not like to waste the time of this House over this petty matter, but, it is important in one way. It is important as it reveals, their approach to the whole question. It has been said, Sir, that it is a fraud, and a farce, because decisions have been taken in *PARDA*. Obviously, the reference is to the meetings of the Muslim League Parliamentary Party which at various times considered this Basic Principles Committee Report. It was further said that while taking these decisions, the Muslim League Parliamentary Party did not consult the Members sitting on the opposition. They have yet another complaint, Sir, and that was that their arguments, their observations, their views, are generally not accepted by this side of the House and therefore, it is really useless to indulge in any criticism or express any views. These were the reasons, Sir, for which they described the presentation or the discussion of the Basic Principles Committee Report as a farce and fraud.

Sir, I would like to examine these three very big arguments advanced by my friends. I would like to put a question to them: where is the undemocratic and unconstitutional and unparliamentary thing in our sittings as members of the Muslim League Parliamentary Party and taking decisions in regard to certain matters? Do not the Members sitting on the Opposition Benches themselves meet in Party and take decisions? I think, Sir, it is really something which is frivolous, something which should not have been suggested because after all it is the practice throughout the world where you have Parliamentary form of Government, that political parties meet and take decisions in their party meetings.

**Mr. Bhupendra Kumar Dutta (East Bengal : General) :** It is a communal party here.

**Malik Shaukat Ali :** I am coming to that communal party affairs also. Here, Sir, I would like to say that I have the greatest regard for some of the Members sitting in the Opposition Benches for their real parliamentary experience, for their wide range of knowledge and I feel that their contributions to the discussion and to the debates of this House have really been sometimes of a very high standard and of a very high quality. Therefore, coming as it does, Sir, from such experienced parliamentarians, it has really surprised me that they should indulge in this type of frivolous criticism. After all, there is nothing absurd about it.

My friend has referred to the communal nature of our organisation. I should like to make a declaration here that when you are sitting there on those Benches, on those Congress Benches, it is very well to say that it is not a communal organisation. We do not mean to practice deception. When we are sitting here as communal party, we would like to give it the name of a communal nature. We did not want to practice deception as was done during the struggle for freedom when the Muslim League and Congress were at daggers drawn and when the congress claimed that it was not a communal organisation. I say, Sir, in substance, it was in substance, a communal organisation. Its claim

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that it represented the Muslims or that it represented the Scheduled Castes was really a bogus claim which could not be substantiated. The positive proof for that is supplied by events just after and before Partition. Therefore, Sir, I think they have really no cause for complaint except to indulge in frivolous type of criticism.

Now, Sir, the other grievance is that the Muslim League Parliamentary Party does not consult them. Sir, again, normally political parties do not consult their opposite political parties. As a matter of fact, in the Basic Principles Committee Report, four members were co-opted from the Opposition Benches who freely took part in the deliberations of the Basic Principles Committee and except on one or two minor matters, of course including separate electorates, they did not even dissent. Except on the question of separate electorate and on just one or two minor matters, they did not even record any note of dissent. In other words, they agreed with the main principles enunciated by the Basic Principles Committee. Now, Sir, I would like to say some thing about their complaint that their observations are ignored. I would like to remind my honourable friends that only the other day when they were discussing the East Bengal Foodgrains Smuggling Act, we had practically adopted all the amendments that emanated from the Opposition because we found there was logic in them because we found there was reason in them. Therefore, whenever any reasonable argument has emanated from the Opposition Benches it was always considered by this side of the House. Therefore, Sir, I would very respectfully say that it is really baseless that we have ever meted out any such treatment to the Opposition. We have always been hearing to their logical and reasonable speeches and I say the contributions of certain Members of the Opposition have really been of a very high character and quality. Now, Sir, I would not like to waste the time of the House. I will now straight away come to the matter which is before the House. Before I really proceed to comment on the provisions of the Basic Principles Committee Report. I would like briefly to reply to some of the points that have been made out by the Opposition. The Basic Principles Committee report has been criticised by the Opposition on three issues; firstly the Islamic Character of the Constitution secondly the alleged undemocratic, unconstitutional and defective character of the proposed federation; under this head numerous things were discussed. The maintenance of parity between the two wings; the alleged non-autonomous character of the Units and the desirability of having autonomous Units and the centralisation of powers and finally the agreed formula containing the clause of 30 per cent. support for two wings.

Now, Sir, I will first take up the points that were developed by the Opposition in regard to the separate electorate. It has been argued that it was in the days of national slavery that this vicious device was introduced. It was the demand of those who hoped to bask in the sunshines of foreign favour. This was the observations which was made by one of the Members of the Opposition. It was further argued that it will be a permanent wedge between the majority and the minorities and will be an obstacle in the way of their political effusion. It is again argued that the partition wall between the majority and the minorities being of a communal nature and not of a political nature, this arrangement is intended to last till dooms-day. Another argument was advanced which has been repeatedly urged whenever there was any discussion on the question of separate and joint electorates and which on the face of it appears to be very logical and reasonable. My friend Sardar Shaukat Hyat Khan

also urged this point which was applauded by my friends opposite, mainly that separate electorates being in their nature a provision for the safeguarding of the minorities' interest, being in nature a concession to the minorities. It is the right of the minorities; it is an exclusive privilege of the minorities and therefore it is the right of the minorities to demand it. Why should the majority community worry about it? Why should they force the separate electorate on the minorities when it is designed for their protection; when it is designed for their safeguards. Now, Sir, obviously and apparently these arguments appear to have some logic but when you apply an analytical operation and scrutinise these arguments in the light of our history before the partition, all these arguments will fall flat on the ground. Now, Sir, I would like to trace the history of the separate electorates here. But I would just like to point out one thing in this connection. When the Scheduled Castes or the Muslim Community demanded separate electorates, it was for a number of reasons,—it was not only because they were in minority—it was because the Scheduled Castes and the Muslim Community were politically, educationally and economically backward. Sir, I need not deal at length. The treatment meted out by the Congress to the Scheduled Castes although claims to their representation were made, yet the manner in which the Scheduled Castes were treated, the manner in which their rights were usurped by the Congress, were the reasons which actually compelled the Scheduled Castes to ask for separate electorates. Similarly, Sir, in the case of Muslim Community, it is well known that for certain reactionary elements in our society, we remained backward politically, educationally and economically so far as the Provinces which now constitute Pakistan are concerned. Sir, I should like to say without any fear of contradiction that although in these Provinces we were in majority, it was the minority community which ruled before Partition in Punjab, in Frontier, in Sind for a number of years. Before partition it was the minority community which was ruling. Why, Sir? Obviously because the entire trade, entire commerce, banking, industry and everything had been monopolised by the Hindu Community because the Hindus were really in a position to form the Government. Therefore, Sir, when we demanded separate electorates it was not only because we constituted the minority; it was because we were backward. The same applies to the case of Scheduled Castes. Now, Sir, some very important questions arise. Is separate electorate designed actually for the protection of the minorities? Why did we ask for separate electorates? This is very important. We asked for it because we felt insecure; we asked because we felt that it was only through separate electorate that we could preserve our identity, otherwise we would be merged in that bigger community which was known as the Caste Hindu. Now, Sir, a very important question arises. If it is the right of the minority communities to claim separate electorates; if it is really designed for their protection and safeguards, there is lot of logic in that argument. It is the minorities who should demand it. Now, Sir, let us see what are the positions today. Are my Honourable friends who are sitting on the Opposition Benches really backward, politically, educationally and economically? I would say it is just the reverse. So far as the Hindu community in East Bengal is concerned, Sir, I would like to say without any fear of contradiction that they are not backward in the way we were backward; they are not backward in the sense in which we were backward, namely, we had no political awakening; there was no unity amongst us; we were divided people amongst ourselves. We had no education as sometimes the reactionary elements would say that actually one who takes up the study of English is really not Muslim. That type

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of reactionary elements stood in the way of our progress. Therefore, Sir, the question arises, can we by analogy consider that the position of the minority communities in East Bengal today is, I may say, the same.

**Shri Dhirendra Nath Datta** (East Bengal: General): You do not know the position of the Caste Hindus in East Bengal. Today, they are not in trade; they are not in service.

**Malik Shaukat Ali**: I will take up this argument of my friend also. But I will only submit here, Sir, that if the Hindu community is in that position in which we were, if they are really politically, educationally and economically backward and if they have the apprehension—because I would be pointing from the speeches of my friends which are conflicting—then why should they not demand separate electorates, when separate electorates are designed for their protection; when separate electorates are designed for them by way of concession. The only reasonable surmise that I can draw is that they do not stand to fear any thing. They have no apprehension like the one when we demanded separate electorate. I would like my friend to take up one position. They say 'we do not fear' although in the same breath they try to deny that and refer to the situation that is actually prevailing in East Bengal. I would only refer to the speech of my friend Mr. B. K. Datta who while describing the situation in East Bengal said and which I do not know whether they are correct or not but assuming for the sake of argument that whatever he has said is correct. He said:

"What in complete deference to our complaints and hardships on the part of the executives, what with perpetual sense of insecurity of our life, honour and property; what with a systematic failure in keeping promises in the matter of recruitment to Public Services; what with deliberate discrimination in the grant of trade licences....."

**Mr. Bhupendra Kumar Datta**: That is exactly why we want joint electorate.

**Malik Shaukat Ali**: This is what you have said. Sir, I want to know if this is the position. Am I right to draw this reasonable inference and the reasonable conclusion that you are really apprehending complete annihilation of yourselves? If so, the proper course left for you is to come out and demand separate electorate.

**Shri Dhirendra Nath Datta**: No.

(Interruptions.)

**Malik Shaukat Ali**: That is what you should do.

Sir, I did not interrupt my Honourable friends on the Benches opposite when they were on their legs....

**Mr. President**: Order, please. Order.

**Malik Shaukat Ali**: Sir, I wish my friends could only appreciate what I am saying. I say if this is the condition prevailing in East Bengal; if the situation is such that there is a kind of frustration and disappointment, which you have expressed in this House, then you should ask for separate electorate. If actually it is incorrect and I say, Sir, that it is absolutely incorrect, then.....

**Mr. Bhupendra Kumar Datta**: It is correct from A to Z.

**Malik Shaukat Ali**: If it is correct, can I draw the reasonable inference, the reasonable surmise, that if you have these apprehensions, then you are in the same position as we were before Partition? We had apprehensions against the majority community. We thought we might be submerged; we thought that our political rights might be usurped by

the majority community and if that is the position then it stands to reason that you should come out with a demand for separate electorate. It is your duty to ask for separate electorate.

*(Interruptions from Congress Benches.)*

**Mr. President:** Order, please. Order.

**Malik Shaukat Ali:** It is this minority community, the representatives of which are sitting on these benches, who should have yelled at the top of their voices:

"We are insecure, we feel that we might be completely annihilated; will you kindly grant us separate electorate because in joint electorate we might be completely finished."

If that is the position, Sir,—I am trying to meet my friend on his own showing—if the conditions prevailing in East Bengal are those which have been described by my friend, I would say, Sir, it was their duty, it should have been their desire, to demand separate electorate.....

*(Interruptions.)*

**Malik Shaukat Ali:** I would say, Sir, that there is another important aspect of this matter and that is the question as to what really is the position in East Bengal. I have already said, Sir, that I do not admit that such position exists as has been described by my Honourable friend; it is by way of argument that it has been advanced that this is our condition. The condition in East Bengal can be judged from the fact that here the members from the minority community are sitting on the Opposition Benches, with a complete freedom of speech and the fearless manner in which they express their views is a guarantee of the fact that they inhale this free air. There is absolutely no coercion on our part. We are treating them very kindly and in a manner which befits an Islamic country.....

**Mr. Bhupendra Kumar Datta:** We hate to be patronised.

**Malik Shaukat Ali:** Now, Sir, I would like to say here that if the demand for separate electorate is not borne out of a desire to have safeguards and protection—I do not want to attribute any motives—I am at liberty to draw a reasonable conclusion, a reasonable surmise, Sir, that because, as I have said before, they are not politically, educationally, economically poor, therefore, they are asking for joint electorates. I wish, Sir, that like really honest and frank people they should try to understand it. Sir, I would say that so far as East Bengal is concerned, the facts are very clear. There, the minority community constitutes one-fourth of the population. Sir, about 25 per cent. of the total population in East Bengal is composed of the minority community and this 25 per cent., mind it Sir, I would presume—and I take my stand on it—is not a backward community. It is a community which is much more politically advanced, much more economically sound, than the 75 per cent. majority community in East Bengal. These are facts which cannot be denied. Therefore, Sir, it is not due to a desire for protection and safeguard that they are asking for joint electorate. The position is simply this: that although I concede that every minority has a right to ask for a share in the administration of a country, here the minority community really desire to dominate the 75 per cent. of the Muslim community in East Bengal. I could cite numerous instances, but I will give here only one instance. It happened that in the Punjab, where we were a majority community—being politically backward, educationally backward, economically backward—our destinies were controlled by 45 per cent. of the Caste Hindus. I concede that the proportion there was much bigger than the proportion here. Here the minority constitutes 25 per cent.; there the minorities constituted 45 per cent, but the principle remained the



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same : that a community which is politically, educationally, economically sound and superior even if they are in a minority, can be in a position to dominate the majority community.

Sir, I can cite the instance of the North-West Frontier Province, where the minority community hardly constituted 20 per cent. but that 20 per cent minority was so strong that it actually dominated the 80 per cent. of the Mussalmans there and we had the Congress Government in the North-West Frontier Province. Therefore, this argument why should the majority community be afraid of 25 per cent. minority in East Bengal is neither here nor there. The most important thing is, Sir, that the people who constitute the minority community can have hold and domination over the majority community. Now, here after all, what do the minority community in East Bengal require ? If they can have another 25 per cent. of the Muslims with them, they can form a Government in East Bengal. I do not grudge them the right to form the Government, Sir. They have a right to share in the administration of the country but I cannot possibly allow this minority to rule over us. If the minority were to capture 25 per cent of the Muslim seats in East Bengal, there is a possibility of their forming a Government—a Coalition Government—with the assistance of 25 per cent Muslims. Again, Sir, in a country like ours, situated as it is with a unit like East Bengal and a population which is more than half the population of our country, if the minority succeeds in forming a Government in East Bengal, it can also form a Government here at the Centre, and therefore the logic that 15 per cent of the minority cannot form a Government again falls to the ground, for in East Bengal the entire minority community is concentrated. There is no such problem in Western Pakistan, where we do not have any minority at all. But it is this compact minority community in East Bengal, Sir, about which I would like to say something.

Sir, we are charged with having a communal organization. This minority problem has always been the bug-bear of the Congress. I need not go into the history of the clashes between the Congress and the Muslim League. We have continued with the Muslim League, because it is our national organization. What is your national organization ? I want to know ; I want to inquire from the Members on the Opposition Benches whether they have got any national organization ? The Congress cannot be their national organization, because the Congress is the organization which was pitched against us, which opposed the partition of the country, which opposed our demand for Pakistan. I had really no mind to refer to this subject, but let us talk like honest and frank persons ; let us not meddle with things in a round about manner. I say that my Honourable friends should have, on the very first day that this country was set up, actually done with the Congress organization. It is all very well to say that you want political fusion with us. It is all very well to say that, Sir, but when we come to the facts, we find a different picture. I will not waste time on the point of separate electorates, but I simply want to expose the hollowness of the point that it is for the minorities to demand separate electorate and majority cannot force the same on them. This is something which is neither here nor there.

Now, coming to the Basic Principles Committee Report itself, the people on the opposition have criticised it—as I said, the parity formula, the non-autonomous nature of the units and the centralization of power and all that. Here, Sir, I would like to make my observations. There is no such thing as basic fundamental principles of a federation. Federation primarily is an agreement in writing between the federating units to federate on certain conditions and terms. Here, I would



like to read some of the preambles of the important Federations to show that it is primarily an agreement which in certain cases may differ in terms. In the case of the United States of America, in the case of the Dominion of Canada and in the case of Commonwealth of Australia the preambles would show that it is primarily an agreement. I would, therefore, like to read here some of the preambles to substantiate my point that Federation is primarily an agreement. Sir, here, I have the Constitution of the Dominion of Canada. The Preamble says :

"Whereas the provinces of Canada, Nova Scotia and New Brunswick have expressed their desire to be federally united into one dominion under the Crown of the United Kingdom (Great Britain) and whereas such union would conduce to the welfare of the people and promote the interests of .... and whereas the establishment of the Union and so on and so forth...."

If you will read the Preambles of all the Federations you will find that the chief characteristic of a federation is an agreement between the federating units. Then examine the various constitutions of federal countries and you will find that the constitutions of no two countries are identical. They are different constitutions which prevail in different countries and therefore when you adopt a constitution, Sir, you are not bound by any fundamental universally accepted principles of a federation. You have to see to the peculiar circumstances of your country. As a matter of fact, this point was really conceded by my friends on the opposition that we should frame a constitution which is suitable, which in view of our special requirements would be suitable for our requirements.

Now, Sir, I would like to deal with two aspects which constitute our peculiar circumstances. There is no country in the world where one unit is separated from the other units by a distance of 1,500 miles. Again, Sir, there is no country in the world where one unit comprises of population which constitutes the majority population of that country. These are the two peculiar circumstances in our country. Therefore, Sir, while drafting the Constitution, we could not possibly shut our eyes to those two very important matters, namely, the distance of 1,500 miles between one unit and the other units and the fact that East Bengal constitutes a population which is more than the entire population of the other units. If we have these two peculiar considerations, then, Sir, could we possibly have a loose federation? The people have been talking of a confederation. I say confederation or loose federation really amounts to undoing of Pakistan. Therefore, under these circumstances, we could not possibly devise a constitution, under which our Centre would be a loose centre, because we possibly cannot have the inclination for disintegration which would be more in the case of a weak Centre. We have agreed, Sir, as units that we must unite and our union cannot, therefore, be based on those considerations on which the other countries unite in federation. Our consideration is mainly on the basis of our common faith. It has been argued by the other side that the people of East Bengal are different from the people in West Pakistan in race, culture, ways of living, dress and all that, and as such we should completely make East Bengal an autonomous unit, because the conditions there are quite different from the conditions prevailing in other units. Their ways of communication are different. Therefore let us give Communications to East Bengal by way of autonomy. Similarly, it has been suggested that on these considerations we should not have a strong Centre. The powers should not be centralized. I concede for a moment, Sir, that the basic idea underlying a federation is also this that the units who desire to federate themselves agree to part with certain powers to the Centre and the residue is kept for them. This is, again, the Islamic principle of federation that you have to adjust yourselves to the conditions prevailing. Therefore, so far as the Central powers are concerned, the only thing that could be done was what

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the Basic Principles Committee Report has recommended. It was also argued that the proposed federal structure is against the Objectives Resolution; it is against the Lahore Resolution. It was argued that in Objectives Resolution we have completely autonomous units. Sir, here, I would like to read that particular portion of the Objectives Resolution to show that it also did not contemplate completely autonomous units. It simply said:

"Whereby the territories now included in or in accession with Pakistan and such territories as may hereafter be included in or acceded to Pakistan shall form a Federation, wherein the units will be autonomous, with such boundaries and limitations on their part and authority as may be prescribed."

The point is that we are not militating against the Objectives Resolution. Our proposed federal structure does not militate against the Objectives Resolution. This Resolution is there and we have imposed certain limitation in view of our special requirements. It was again said that it militates against the Lahore Resolution. I would say, Sir, that it does not militate against the Lahore Resolution. The essence of the Lahore Resolution was that we have to form States which are predominantly Muslim. That was the essence of it, Sir. Then what kind of Federation, what kind of Government will we have? The Lahore Resolution was absolutely silent on that.

**Mr. M. H. Gazder:** It was not silent.

**Malik Shaukat Ali:** It was silent as to what kind of Federal Government we will have. It simply said that we are to carve out two States, one predominantly Muslim, comprising of areas contiguous to each other and the area predominantly belonging to the other community, shall form another State.

**Mr. M. H. Gazder:** The units themselves were to be autonomous.

**Malik Shaukat Ali:** What I am submitting is that our Lahore Resolution simply said that this sub-continent of Pakistan and India should be divided, should be partitioned so that the areas which are predominantly Muslim and contiguous to each other should provide a homeland for the Muslim community and the areas which predominantly are non-Muslim should provide a homeland for the non-Muslims. That was the essence of the Lahore Resolution. The Lahore Resolution does not say anywhere whether the units would be completely autonomous or there will be centralization of power. The Objectives Resolution is a true translation of the Lahore Resolution. It says: The units will be autonomous. But you forget the most important limitation that has been imposed and that is: with such boundaries and limitations as their powers and authorities may prescribe. Could we, Sir, under these circumstances, allow East Bengal to become completely autonomous? Could we, with this distance of 1,500 miles, allow East Bengal to defend itself in the case of an emergency? Could we allow East Bengal to have its own communications? After all, Sir, how will the Central Government work if you give powers to the provincial units? You also apportion the revenues. You should also apportion the taxes. No Government can run without exchequer. If you have to transfer most of the subjects to the Units, you must also part with most of the revenues; and having parted with the revenues, with what are you going to run the Central Government? Why have a Central Government at all? I respectfully beg to submit that to have a weak Centre or to have a Confederation, as proposed by some members or to give complete autonomy to East Bengal, really constitutes a negation of Pakistan. It would mean undoing of Pakistan. Sir, I say we are not even for a moment prepared to take risks. We are not prepared for a moment to

take risk in the matter of our country, in the matter of Pakistan which we achieved after great sacrifices. We must concede that when we were demanding Pakistan it was with a desire that we should unite and have union between East Bengal and the Western zone.

The other aspect of the matter is the parity formula. It has been argued that it is most undemocratic. They say that we have provided something which is a negation of democracy. Sir, I do concede for a moment that on the face of it the parity formula, with 30 per cent. clause, does militate against the democratic principles but, Sir, we have provided that clause for peculiar circumstances of our country—East Pakistan Unit, being superior in number, can dominate. I would like here to refer to the definition of "Federation" which I find in Volume IV written by our Secretary, Mr. M. B. Ahmad. Chapter I says (the observations are of Lord Watson, speaking for the Privy Council) :

"The object of the Act was neither to weld the provinces into one, nor to subordinate the provincial governments to a central authority, but to create a federal government in which they should all be represented, entrusted with the exclusive administration of affairs in which they had a common interest, each province retaining its independence and autonomy. That object was accomplished by distributing all public property and revenues which had previously belonged to the provinces...."

Again :

"The term 'federal union' in Canadian as well as Australian Constitution has been used to designate a union which, at all costs, was not to be a Legislative Union : not, in other words, a merger for all purposes of Government as a Legislative union must be in any land under the rule of law. Apart from detail the term federal union in these modern times implies an agreement between two or more communities which, as between themselves, are independent and autonomous in all other matters....."

Further :

"The exact position of the line which is to divide matters of local concern in each unit is not of the essence of federalism. Where it is to be drawn in any proposed scheme depends upon the view adopted by the federating communities as to what, in their actual circumstances, geographical, commercial, racial or otherwise, are really matters of common concern and as such proper to be assigned to a common Government. But the maintenance of the line, as fixed by the federating agreement, is of the essence of modern federalism ; at least as exhibited in the three Anglo-Saxon federations of today, the United States of America, the Dominion of Canada and the Commonwealth of Australia...."

**Mr. President :** Malik Shaukat Ali : Do not dilate on a single point too much.

**Malik Shaukat Ali :** Sir, I will only say that so far as the principle underlying a federation is concerned, there are no universally accepted principles. All that we require is that in view of our special and peculiar circumstances, we can provide whatever is suitable for our requirements. If we find that autonomous units are not practicable, we can then reduce the autonomous character of those units. It has been suggested that the proposed federal structure has really reduced the units to the status of district boards and to the status of municipalities. A close study will reveal that the autonomous character of the units has been fairly maintained. It is only in regard to common interests that power has been given to the Centre.

I will now come to a very important matter and that is the Islamic character of the constitution. It is a very delicate matter in view of the public opinion that has developed in the country. But, Sir, I must say here that while considering this aspect of the matter we should not be led away by sentiments. In the framing of any constitution sentiments have no place. We should try to understand what is the domain of constitution ; what is the jurisdiction of constitution ; what are constitutional

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subjects and what are subjects which are not constitutional. Sir, I have tried to understand the point of view of my friends who have demanded Islamic Constitution. I have read their literature. I have studied a booklet which contains the major articles of constitution as suggested by Maulana Mohammad Shafi and I would like just to read one part to show what is exactly constitution as distinguished from law. On page 1 the heading is: "Distinction between Constitution and Law." It reads:

"Before I take up the verses and their discussion it seems necessary to emphasise the distinction between 'constitution' and 'law', because people are not generally able to differentiate between them. They rather regard them as one and the same thing and thus land themselves in confusion and difficulties of different types." The term 'constitution' comprehends within itself the basic principles of the State. The problems with which it deals are such as these: In whom does sovereignty reside? What should be the form of government: parliamentary, monarchical or otherwise? In whom should rest the legislative power and on what principles and conditions? If the State should have a President, by whom and in what manner should the President be appointed and who should have the right to depose him if the need arises? What should be the powers of the Head of the State? What should be the qualifications necessary for the Head of the State?"

So on and so forth." Further Maulana Mohammad Shafi says:

"Law, on the other hand, deals with the principles and problems of day-to-day administration and the working of the administrative machinery."

If we try to understand what constitution in the real technical sense of the word means, there will not be much difficulty. I make bold to say that in that technical sense—in the sense in which constitution is understood by the modern world, in the sense in which anybody would understand it, in the sense in which it has been described in this pamphlet—it would only mean a machinery of Government which would determine the administrative machinery of the country. It should deal with certain constitutional aspects of how a State is to be governed. Now, Sir, distinct from the constitution is a thing which is called law....

**The Honourable Mr. A. K. Brohi** (Sind: Muslim): Is not constitution law in itself?

**Malik Shaukat Ali**: It is constitutional law. As against constitutional law we have so many categories of law. We have got substantive law; we have penal law and criminal law. Then we have got laws of society—social and moral. Therefore, Sir, in order to truly appreciate the significance of constitution I am trying to give different categories of law. Therefore constitutional law is quite distinct from substantive law or penal laws. Then I want to make it absolutely clear that constitutional law has a limited meaning. It cannot be said that while framing the constitution we must provide in the constitution about the ethical side of our society, or we must provide in the constitution what social ills and what moral ills should be prohibited in the future. It is not the part of the constitutional law. The domain of the constitutional law is to provide the machinery for the working of our administration. Now, Sir, I will here say that in that sense, in the sense that constitution is a method or a machinery of Government a form of polity, in that sense there is no form of Government no polity which has been described in the Holy Quran or by Hadis or Sunnah. I will try to explain it here. Nowhere we find in the Holy Quran the specific form of Government which can be described as Islamic State, as Islamic form of Government. I do not deny that in certain chapters there are some references to certain constitutional matters from which we can draw certain deductions,

Now, Sir, I do not find anywhere in the Holy Quran as to what should be the form of Government except that there is a reference that it should be a democracy, what kind of democracy whether it is unitary or federal, there is no mention. The only deduction that I can draw after going through the entire Quran is that we should have a form of Government which should be democratic as opposed to monarchy, or any other form of Government. Now, Sir, I was dealing with this matter that if technically and strictly we are to remain within the domain of constitution we should not go beyond its scope. Now, the only thing that we find from the Holy Quran is that we should have a democratic form of Government. Now, Sir, in a democratic form of Government there should be a head of the State that can also be deduced but how he is to be elected, no specific provisions we find in the Holy Quran except that he has got to be elected; how, what are the rights of the electorates, who can elect him, etc., the Holy Book is absolutely silent on that. But it can easily be deduced that our State should be a democracy in which the Head of the State should be elected. Now we would be going beyond the jurisdiction of constitution if we further say that while electing the Head of the State care should be taken by the electorate that they may elect a person who is very pious, who has certain religious qualifications. That, I respectfully submit, is not the domain of the constitution. That is the moral side of it. That is the duty enjoined upon the electorate that while you are electing you see that you elect a person who is really pious, so on and so forth. But, Sir, you cannot enforce that in the constitution. You cannot provide that in the constitution because it is not enforceable. Therefore, Sir, I say that there are in the Holy Book certain constitutional aspects and I would just count them. There are hardly 3 or 4 constitutional matters in the Holy Book. Of course we have numerous laws in the Holy Book, the law of inheritance of Muslims, laws governing marriage and divorce, law of evidence, certain provisions regarding criminal procedure code and penal code. Those laws we cannot lay down in our constitution as that is not the domain of the constitution. Constitution will simply say that our machinery will be like that. There will be a legislative body and there will be an executive and there will be a judiciary and that is all that need be provided in the constitution. It is now an essential part of the constitution to provide for complete separation of judiciary from the executive and the legislature. The Legislative is defined, with its powers, the judiciary is defined with its powers and so is executive defined with its powers. Sir, it is not the function of constitution to enumerate the kind of laws that we are going to frame. It is for the Legislature to do so. Now, Sir, here I would like to emphasize one more point. The ethical side of things, the social laws and the moral laws are such that they cannot possibly be enforced through any enactment. The Holy Quran enjoins so many things. It says it is the duty of every Muslim to say prayers five times each day. It is the duty of every Muslim to see that he gives *Zakat*, *Khairat* and performs the Holy Haj. There are so many other things which are there. Now the Holy Quran says you should abstain from ill and you should indulge in good.

**Mr. President:** Now please come over to the principles of the Basic Principles Committee Report.

**Malik Shaukat Ali:** I am speaking on those principles and I was trying first to separate the ethical and the moral and the reformatory side of the Holy Quran from the constitutional side of the matter. Now, I say that if we look at the Basic Principles Committee Report we will find that at the very outset certain provisions of the Directive Principles of State Policy are there which deal with the procedure for

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preventing legislation repugnant to Holy Quran. Now with the exception of these first six pages, the rest of the constitution has nothing to do with Islam. I say, Sir, that all the provisions contained in the pages from 7 to 74 or 75 cannot be said to contain any provisions which give Islamic character to the constitution except a reference here or a reference there in regard to the administration of the oath to the Head of the State or election of the Head of a State that it should be a Muslim. Apart from that there is no reference whatsoever which can be easily picked up and pinned down to the Islamic nature of the constitution. We have only the Directive Principles of State Policy and the procedure with regard to laws repugnant to the Holy Quran. I would like to make one thing very clear: there is a demand from the public and it has been said that it is a very strong demand and we have also been holding out assurances to the country that we are going to give them an Islamic constitution. Sir, have we gauged or have we tried to understand what in this slogan they are trying to convey. The slogan may be a wrong slogan but it is our duty to find out what they really want when they say Islamic constitution. What is really at the back of their minds. What are they asking for. I can respectfully submit that we have not tried to understand the point of view of the country when they ask for Islamic constitution. There is no denying the fact that our present society in certain ways is un-Islamic. There is no doubt that during the 150 years of foreign rule certain un-Islamic things have crept into our society. Therefore the demand from the public is that 'let us do away with these un-Islamic things in the society; let us do away with these evils which have crept into our society as a result of foreign rule'. I can understand this slogan in that sense. What they want is reformation of our society. What they want is that our present society which is un-Islamic in many ways should be improved, should be reformed. This is, Sir, what I understand from their slogan of Islamic constitution. I have had talks with a number of people, people in the street. I asked them 'what do you mean by Islamic constitution.' They say a number of things, Sir, which ultimately point to one thing that they are talking about the ethical and moral side of our society. They say 'is it Islamic what we see in the administration—corruption, nepotism and favouritism. Islam does not permit these.' Similarly, Sir, 'Is it Islamic that we find people indulging in things which are forbidden by the Holy Quran; people drinking; people taking liquors.' They say 'this is un-Islamic; we want that these things should stop.' Similarly they want numerous other evils existing in our society to be done away with. But so far as the constitution is concerned it is something really beyond their comprehension. They cannot understand what constitution means, but they are trying to express their views through the slogan of Islamic constitution whereas they are really asking for something which is quite different from the constitution. Sir, I wish there had been a referendum in the country to find out what people really mean by the slogan of Islamic constitution and I assure you, Sir, after the referendum the desire of the people would have been just one thing: reform of our society, nothing to do with the constitutional aspect of the matter. It is the moral side which they are keen that it should be reformed and they are perfectly justified. There are certainly, definitely un-Islamic things in our society, many tendencies are un-Islamic and therefore, they are perfectly justified in asking for the removal, in asking for doing away with those things which are un-Islamic, but, Sir, they have expressed their views through the slogan which I would very respectfully submit is really a wrong nomenclature.

**Mr. President:** You have already taken one hour.

**Malik Shaikat Ali:** I have yet to develop certain points, Sir. As I was submitting while framing the constitution we should not ignore this important aspect of the matter; we should not transgress, we should not bring into the jurisdiction of constitution which is really not constitution. Here, I would like to make a few observations in regard to certain provisions which are contained in the Holy Quran on the constitutional issues.

I will again refer to that very pamphlet in which 18 articles have been suggested that according to the saying of Mufti Mohammad Shafi, the utmost that he could get from the Holy Quran in the nature of constitutional issues, are these 18 articles. He admits that out of these 18 articles, about 11 of them deal with fundamental rights which we have already provided in a different chapter headed "fundamental rights".

Then, Sir, with regard to other provisions, I need not read all these provisions, all that it boils down is that the first principle enunciated by Mufti Mohammad Shafi that according to the teachings of Holy Quran sovereignty lies in Almighty God. Now, Sir, it is really an academic discussion. Persons, people in the street, would not like to go into these niceties of such a discussion. Sir, can by any law tomorrow is there any danger that any legislature will undo this fundamental principle of Islamic constitution? Can we by any law declare that sovereignty does not lie in the Almighty God. It is really, Sir, a matter of academic discussion. Nobody in the future is going to pass a law so as to annul the provisions of the Holy Quran to the extent that sovereignty lies instead of Almighty, lies somewhere else. Well, then this is one article that my friend has been able to deduce from the Holy Quran.

The second thing that has been deduced from the Holy Quran is that we should have a democratic form of Government. I have already conceded, Sir, that our parliamentary system of Government is a democratic form of Government. Therefore, even the present constitution that we are working on, the Government of India Act, is not undemocratic or un-Islamic constitution. It is a democratic constitution. Therefore, Sir, the second article again is a matter which is already an accepted principle. There is really no un-Islamic nature of the constitution that we are working today, and as a matter of fact, all the constitutions of the world which partake in the nature of democracy, have got these essentials there. The second provision, therefore, Sir, is really not necessary unless we feel that our present constitution does provide for a power given to the legislature to declare that sovereignty can lie in somebody else also. The second provision, Sir, is democracy. I have no dispute with that article. In accordance with the Holy Quran we must have a democratic form of Government.

Then, Sir, the third article is that we must have a President, or the Head of the State elected in the manner in which the President of America is elected. There should be a presidential election. Sir, I have no dispute here also. How does this recommendation make the constitution Islamic or would it mean that the constitution in America is Islamic in that sense because it has provided for presidential election. The constitution of all the democratic countries of the world, Sir, in that sense would be Islamic. Then, Sir, why this talk that we must have our Islamic character of the constitution. Well, there is nothing un-Islamic already in the type of constitution that we are working.

Then, Sir, comes the third and I would say really it is not a matter which is within the jurisdiction of constitution. The third article says

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that we must elect that person as President who is pious, who is this and who is that. Here, Sir, I would like to read the Oath that is to be administered to the Head of the State :

"I do swear in the name of God that I will faithfully, discharge the duties of the office of the Head of the State of Pakistan according to law, that I will preserve, protect and defend the Constitution, that I will do right to all manner of people according to laws and usages of Pakistan without fear or favour, affection or ill-will and that, in my public and personal life....."

Sir, this is very important :

"I will endeavour to fulfil the obligations and duties enjoined by the Holy Quran and the Sunnah."

Now, Sir, so far as the election of the Head of the State is concerned, I said that it is a constitutional matter.

**Mr. President :** That you have said several times ; do not repeat again and again.

**Malik Shaukat Ali :** Sir, I am not repeating, but then we are dealing with the duties of the Head of the State. What is he to do ; how is he to conduct the affairs of the State ? Should he remain honest or should he adopt dishonest methods ; should he do this or that is a matter which cannot be a subject matter of constitution. How, can, Sir, we enforce those provisions of law if we are going to have them in the constitution. Can it be possible to enforce this standard of morality, the notion of just and unjust, the notions of honesty and dishonesty ? It is a very difficult provision which cannot even be enforced in any court of law. If tomorrow a Head of the State is elected who at the time of election was considered to be an honest man, cannot be removed by anybody except those electors from the electorates who think that he has become dishonest. Therefore, any provision which is a matter of discretion, which is a matter left to the members, cannot be enforced in a court of law. Nobody can enforce this provision in a court of law and file a suit that the Head of the State who should be this and who should be that is not this and, therefore, he is not entitled to be the Head of the State. I would like somebody to enlighten me on this whether such a provision can be enforced in a court of law. After all, Sir, the constitutional provisions are there that they should be enforced in courts of law. I would here like to say, Sir, that we have fundamental rights and they are enforceable in a court of law. We have given certain rights to the people and if tomorrow any legislature takes away those rights, anybody can file a suit and say that this is *ultra vires* that this militates against the fundamental rights and therefore, this law should be declared *ultra vires*, null and void. Therefore, Sir, a provision of this nature which cannot be enforced is really not the subject matter of constitution.

**Mr. President :** Are you quoting from Mufti Mohammad Shafi's articles ?

**Malik Shaukat Ali :** I am taking the articles which according to him are matters of constitution.

**Mr. President :** Please show me that they are in the Basic Principles Committee.

**Malik Shaukat Ali :** These are the principles of Quranic constitution which are actually incorporated in the Report of the Basic Principles Committee.

**Mr. President :** Please show me that they are in the Basic Principles Committee Report.



**Malik Shaukat Ali:** In regard to the Basic Principles Committee Report, I was dealing with the election of the President. I have already read the oath that he has to take. This shows that he is to be a Muslim and so on and so forth. I say, Sir, that so far as Quranic principles are concerned, that there should be a President, this is a matter of constitution. We can lay in the constitution that there should be a President who should be elected by so and so, but this is not the subject of constitution. Further to say what are the duties of the Head of the State....

**Mr. President:** You should deal with the Basic Principles Committee Report.

**Malik Shaukat Ali:** It is here, Sir, you remarked that I was not relevant; I was relevant in the sense that in the Basic Principles Committee Report, we have further expressed our desire that the Head of the State should discharge his duties, do this and do that, which I very respectfully submit, Sir, is the moral side and anything which cannot be enforced cannot take the form of a subject-matter of constitution. This is, Sir, on what I was dwelling upon.

Now, Sir, other articles contained in this book, out of these articles, Sir, we have adopted some in the Directive Principles of State Policy. Now, Sir, after all Directive Principles of State Policy are part of the Constitution. Here are the protections given and therefore, we should also meet the wishes of the people without in any way creating difficulties and obstacles in our way.

Then, Sir, I will say a few words about the chapter dealing with the law repugnant to the Holy Quran. Now, Sir, when we provide in the substantive part of the constitution, when we impose limitations on the legislature, that Legislature shall not do this and shall not do that. Then somebody must object, Sir, whether the legislature has really again that limitations just as in the case of Fundamental rights. We can go to a court of law and say all that. The Legislature could not frame a law which militates against a particular fundamental right. It has framed a law and therefore it should be declared null and void. Similarly, Sir, in regard to the legislation which is repugnant to the Holy Quran, if we have imposed this limitation, we cannot leave the legislature to be the judges of that legislation, it has been provided that a reference will be made to the Board of Ulema, persons well versed in Islamic laws. Now, Sir, when a reference is made to an expert, that expert's opinion must be considered as an expert opinion. I will only here give an instance: if I consult a doctor and ask him; 'will you kindly examine me and give your opinion regarding my ailment which I have got' but then I tell him at the same time, 'look here, I am consulting you, you can give your opinion but in the matter of treatment I will have my way'. That, Sir, is really ridiculous. An expert is an expert and his opinion should have really that weight and the regard which is its due. Therefore, if we have provided this Board of Ulema, it is ridiculous to say that they would only give their opinion and when it would come to the matter of decision, we would have our own decision. There is again another anomaly, Sir, and it is this. In the matter of religion, Sir, after all whenever there is any reference to the Board of Ulema, it will be on the question of religious matters; it will be on the question of the interpretation of the Holy Quran, the Sunnah and the Hadis: there will be a reference in regard to matters which relate to faith. Again, Sir, it does not stand to reason that once the Board of Ulema have declared....

**Mr. President:** Why are you flogging the dead horse when no body supports you.

**Malik Shaukat Ali :** I am only criticising the chapter that no Legislature should enact any law which is repugnant to the Holy Quran and the Sunnah, I say that this should form part of the Directive Principles of the State Policy. In the light of that I am criticising, Sir, the practicability of the provision of this Chapter III. Sir, it has been suggested that power should be given to the Supreme Court to finally interpret the law whether it is repugnant to the Holy Quran and the Sunnah or not. Sir, I would like to say and that with all the emphasis at my command that it would be creating trouble for our future generations ; we would be actually hampering the progress of our country if we were to open a chapter of religious controversies. Sir, I say so because it is a matter of common knowledge that so far as the Sunnah and Hadith are concerned, there are voluminous books and there are different points of view in regard to certain Hadis. Therefore, Sir, when we just create an opportunity and occasion for these religious controversies to enter into courts of law, there will be no end to it. I, therefore, submit that this is another chapter which is really impracticable and will only create difficulties in the administration of our country. Sir, as a matter of fact framers of the Basic Principles Committee were quite conscious of the fact that the provision of this Chapter III would create difficulties there. Therefore, Sir, they have excluded from the operation of this Chapter Money Bills and the Budget. Therefore a very important question arises. If we can exclude certain provisions from the Chapter on the ground of expediency and on the ground that it would completely put a stop to the administration of the country, then I think we could also in view of the tremendous difficulties that we would be facing also recommend that so far as the legislation repugnant to Holy Quran and the Sunnah is concerned we can have it in the Directive Principles of the State Policy. Sir, after all what we need is and what we want is to reform the society as is the demand of the people. So far as the constitutional aspects are concerned, we must say that we do not lay down a machinery which will hamper our progress. I do not want to dilate upon this Board of Ulema. But on the question of giving jurisdiction to the Supreme Court I want to warn that it will create trouble which will be something which we cannot visualise at the moment and there is also a scope for persons who are not well wishers of our country, who do not have the good of Pakistan at their heart, to exploit that chance and to create difficulties for our country. Now, Sir, so far as the Islamic constitution is concerned, I will only submit that if we could achieve our object by actually diminishing the scope of difficulties and practical difficulties, then we should adopt that course. I am not opposed to Islamic constitution in the sense in which a section of the people wants it. I say, Sir, that no law should be made which is repugnant to the Holy Quran and the Sunnah. In this connection I can say, Sir, that so far as the laws which are in force in the country are concerned, there are hardly two or three such laws which can be called un-Islamic. We have such a volume of laws ; there is hardly any provision with the exception of the law of inheritance. We have customary law in Punjab which has also been abrogated. Therefore, if we have said in the Directive Principles of State Policy that all laws which have so far been opposed and which are complicated and un-Islamic should be removed ; if we can say in the Directive Principles of State Policy that all those laws will be codified and the un-Islamic part of it will be removed, we can similarly say that the legislature will see that it shall not frame in future any law which is un-Islamic.

**Mr. M. H. Gazder :** Directive chapter has no objective effect.

**Malik Shaukat Ali :** Sir, I would like to ask from my friend why then this provision of the Islamic constitution has been incorporated in the

chapter. Does it mean that this provision which finds mention in this Directive Principles of State Policy like the prohibition of drinking, gambling and prostitution, elimination of 'Riba', promotion of Islamic moral standards, all these things are not necessary.

**Mr. M. H. Gazder :** They are all hopes !

**Malik Shaukat Ali :** These are, Sir, then by way of ornaments. If we can achieve these things which are Islamic by including certain provisions in the Directive Principles of State Policy, then we can also achieve the object of having no legislation repugnant to the Holy Quran and the Sunnah by including them in the Directive Principles of State Policy. Sir, I want to put the practical difficulties of this chapter before the House. We should not try to introduce reforms which ultimately prove fatal for us.

I will now deal with certain other aspects of the Basic Principles Committee Report in so far as the chapter of amendment of constitution is concerned, as for example, judiciary and the provision relating to tribal areas. I will first of all take up the chapter relating to the amendment of the constitution. Here, Sir, I have already stated that federation is an agreement between the federated units. It is a well-established law of evidence that whenever you enter into an agreement, you cannot subsequently modify that agreement or amend that agreement unless all the parties to that agreement consent for doing so.

**Mr. President :** Malik Shaukat Ali, I have to adjourn the House. As we cannot have any afternoon session today, I think we should meet early tomorrow morning. The House stands adjourned till 10 a.m. tomorrow.

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The House then adjourned till Ten of the Clock, in the Morning, on the 21st October, 1953.



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